

not from injuries suffered in the accident. Accordingly, K.S.A. 44-501, the "heart amendment", prevented an award of compensation.

The decedent's surviving spouse (claimant) requests review of whether the decedent's accidental injury arose out of and in the course of employment. Claimant argues the resultant death was due to and caused by the injuries decedent sustained in the vehicle accident.

Respondent argues the claimant did not sustain the burden of proof that decedent's death was caused by the vehicle accident and therefore the ALJ's Award should be affirmed. Respondent further argues the evidence proves the claimant died of an anoxic encephalopathy resulting from cardiac arrhythmia.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the extensive evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs and oral arguments, the Board finds the ALJ's findings and conclusions are accurate and supported by the law and the facts contained in the record. It is not necessary to repeat those well reasoned findings and conclusions in this Order. The Board approves those findings and conclusions, adopts them as its own and affirms.

Why the decedent's vehicle left the road is unknown. But it is not necessary that the accident's cause be proven for the death to be compensable. It is necessary, however, that the cause of death not be coronary artery disease.

K.S.A. 44-501(e), commonly known as the "heart amendment" provides:

Compensation shall not be paid in case of coronary or coronary artery disease or cerebrovascular injury unless it is shown that the exertion of the work necessary to precipitate the disability was more than the employee's usual work in the course of the employee's regular employment.

It is undisputed that Mr. Kauffman's heart stopped which lead to an interruption of the flow of oxygen to the brain (anoxic encephalopathy) and resulted in his death.

Claimant contended that the anoxic encephalopathy was caused by blunt trauma suffered in the accident. That was the initial determination made by Dr. Francis L. Garrity, the pathologist who performed decedent's autopsy. His determination decedent had suffered blunt trauma to the chest was based upon the massive amount of hemorrhage in the chest. However, when apprised of the emergency treatment decedent received after the accident, especially the volume of blood administered into decedent's chest, Dr. Garrity revised his opinion and admitted he could not determine whether the anoxic

encephalopathy was from an original cardiac event or from trauma. And the doctor felt it was quite likely decedent had a cardiac event which led to his loss of control.

Dr. Garrity testified:

Q. And so bottom line, we just flat out do not know whether it's the heart attack or whether it's the trauma. And you can't pick one over the other. Is that a fair statement?

A. Well, I mean, if I were to be pushed to the wall, I would say this guy's heart was in such bad condition that he did, in fact, have a cardiac event which led to his loss of control. But can I prove it? No. I can just say that what I saw on autopsy is certainly consistent with that scenario. There may have been something else going on. But I can't say within a reasonable degree of medical certainty why he actually lost control.

Q. And even after he lost control, whether the cardiac problems that precipitated the brain damage was from an original cardiac event or from trauma?

A. That's correct. I can't make that distinction. We mentioned commotio cordis. That's still a very real possibility here. He hit something to the extent that his heart went into an arrhythmia [*sic*] and he lost consciousness. But I - - Going back to what I said earlier, I cannot say within a reasonable degree of medical certainty why he lost consciousness, but I can say that he did lose consciousness.¹

Dr. Garrity further testified that there was no evidence of external blunt force trauma in decedent's upper chest or pectoral muscles, nor was there any epicardial bruising. And that blunt trauma is usually evidenced by bruising or some other external evidence. Decedent did have bruising across his upper thighs which had apparently come in contact with the steering wheel. Lastly, the doctor concluded that claimant did not suffer from positional asphyxia because at autopsy he did not find petechial hemorrhages which he opined would occur frequently if not all the time with positional asphyxia.

Dr. Michael W. Farrar, a board certified cardiologist, testified as an expert for respondent. Dr. Farrar reviewed the medical evidence and concluded decedent's death was caused by cardiac arrhythmia. The doctor explained the basis for his opinion:

Q. Can you explain for the court the basis for your opinion in that regard?

A. The circumstances of his death suggested that he lost consciousness and went off the road. He may have been, in fact, had waning - - waxing and waning consciousness for a few minutes before he completely passed out before the truck crashed. After that he was ultimately resuscitated. The initial arrhythmia [*sic*] that

¹ Garrity Depo. at 44-45.

was noted asystole was probably not the arrhythmia [sic] that caused his death. It was probably an arrhythmia [sic] that occurred from prolonged anoxia, but the arrhythmia [sic] that most likely caused his death was ventricular tachycardia and then ventricular fibrillation which resulted from a high grade stenosis of the left anterior descending coronary artery.

The findings were typical in that there was no evidence of myocardial infarction or heart attack which is typical of people with sudden cardiac death. There were injuries to his chest that most clearly fit the pattern of post-resuscitation injuries. There was nothing to substantiate blunt chest trauma of any significance or head trauma of any significance. And so the entire scenario most closely fits that of somebody who died of a cardiac arrhythmia [sic].²

Dr. Farrar further noted that to have enough force to cause blunt chest trauma that resulted in a fatality it would be unusual to not have external signs of chest trauma. And the doctor noted that there was no pericardial effusion (fluid in the pericardial sac that surrounds the heart) which the doctor opined would have been present had decedent died of blunt trauma to the chest. Finally, the doctor noted the absence of cardiac contusion (bruise to the heart) on either the gross or microscopic evaluation at autopsy.

The Board is mindful the claimant's expert cardiologist, Dr. Krishan K. Goyle, opined decedent's death was the result of blunt force trauma to the chest as a result of the accident. However, the Board finds Dr. Farrar's opinion more persuasive and is corroborated by the lack of findings that credibility suggest decedent suffered blunt force trauma to the chest in his vehicular accident.

In summary, the claimant's contentions that decedent suffered blunt force trauma or positional asphyxiation were refuted by the pathologist's findings upon autopsy and the more persuasive medical opinions which discounted those alleged causes of death. Moreover, the Board adopts the ALJ's analysis that there was no evidence of either respondent's negligence or delay in providing decedent treatment after the accident.

The Board concludes claimant failed to meet her burden of proof to establish decedent suffered a work-related accident and affirms the ALJ's Award in all respects.

AWARD

WHEREFORE, it is the order of the Board that the Award of Administrative Law Judge Bruce E. Moore dated January 27, 2005, is affirmed.

IT IS SO ORDERED.

² Farrar Depo. at 7-8.

Dated this 30th day of November 2005.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Gary A. Winfrey, Attorney for Claimant
Clifford K. Stubbs, Attorney for Respondent and its Insurance Carrier
Bruce E. Moore, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director